IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Bail Appl..No. 7344 of 2007()

CRIME NO. 589/07 OF SASTHAMCOTTA POLICE STATION

PETITIONERS/ACCUSED

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1. SUDHEER K., S/O KAMARUDDIN,
   AGED 31 YEARS, PADIPPURA PADINJATTATHIL HOUSE,
   SASTHAMCOTTA P.O. & VILLAGE,
   KUNNATHUR TALUK, KOLLAM DISTRICT.

2. PRAKASH KUTTAN, S/O KUTTAN,
   AGED 32 YEARS, AALUVILAKIZHAKKETHIL HOUSE,
   VILANTHARA P.O., VALIAPADAM(VIA),
   WEST KALLADA VILLAGE, KUNNATHUR TALUK,
   KOLLAM DISTRICT.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS:

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1. STATE OF KERALA, REP. BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. THE STATION HOUSE OFFICER,
   SASTHAMCOTTA POLICE STATION,
   KOLLAM.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7344 of 2007

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Dated this the 30th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 in a crime registered for offences punishable, inter alia, under Section 3 of the P.D.P.P. Act. The crux of the allegations is that a procession raising protect against the police was proceeding. That procession was dispersed. Thereafter two persons from that procession allegedly caused destruction of a K.S.R.T.C. bus, which had come that way at the relevant time. Specific act of mischief was committed and damage was caused to the bus by those persons. The driver of the bus made enquiries and ascertained the names of those two persons, who indulged in the act. He went to the police station and made a complaint. In the complaint he had ascertained the miscreants. Such persons were shown as accused 1 and 2 in the F.I.R. The learned counsel for the petitioners submits that the petitioners are

absolutely innocent. It is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioners.

2. The learned Prosecutor opposes the application. He submits that there is absolutely no reason as to why the prompt statement of the driver of the bus should be disbelieved or discarded at this stage. At any rate, this is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioners, submits the Prosecutor.

3. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I do not find any features in this case, which would justify the invocation of the extra ordinary equitable discretion under Section 438 Cr.P.C. No specific motive is alleged as to why the statement of the driver about his efforts to ascertain the identity of the miscreants should be discarded. This I am satisfied is a fit case where the petitioners must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioners appear before the Investigating Officer or the learned Magistrate having jurisdiction and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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